

Applicant : Miller et al.
Appl. No. : 10/595602
Examiner : Brian T Gedeon
Docket No. : 13634.4009

Remarks/Arguments

The title and claims 4 and 6 have been amended in a manner which is believed to remove the informalities set forth in paragraphs 5—7 of the Office Action. Thus, it is believed that these informalities no longer exist.

Claims 1—3, 13—15, and 18 have been rejected as indefinite under 35 U.S.C. § 112 for the reasons set forth in paragraph 9 of the Office Action. The subject matter of claim 1 has been incorporated into new claims 29—32 and claims 1—2 have been cancelled. First, the specification and claims are directed to those skilled in the art and a person skilled in the art would understand the wrap as claimed in claims 3, 29 and 31 includes two ends and two sides extending between the ends as shown, e.g., in Figure 1. Second, claims 3, 29 and 31 make reference to the centre of the wrap in relation to the sides, and a person skilled in the art would understand the centre to be equidistant from the sides. Third, the phrase "at, near, or along" in claims 3, 29 and 31 refers to a location on the wrap in relation to the sides and the centre for purposes of comparing characteristics of the wrap at these relative side and centre locations, and a person skilled in the art would understand the location to be referring to a position with regard to the sides that can be either at the side, near the side or along the side, and with regard to the centre that can be either at the centre of the wrap between the sides, near the centre between the sides or along the centre portion or region between the sides. Fourth, the phrase "at least some of its sides" in claim 3 has been amended to read "at least a portion of its sides" and a person skilled in the art would understand this limitation to be referring to less than the entire length of the sides. Lastly, the reference to elastic/stretchable properties and compressive forces in claims 3, 29 and 31 refer to characteristics of the structural elements of the wrap and thus are structural limitations of the claims. Accordingly, reconsideration and withdrawal of the examiner's indefiniteness rejections are requested.

Claims 1—3 and 15-17 have been rejected as anticipated by Shifrin et al. WO 95/05122. Claims 1—2 have been cancelled. Shifrin is not directed to a vessel wrap for securing about a blood vessel by encasing a section of the vessel. Rather Shifrin is directed to a band that extend about a vessel for correcting insufficient valves in venous

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junctions. Shifrin does not disclose, describe or suggest a wrap that encases the vessel and in which the compressive force at, near or along the sides exerted by the side edge portions is less than that exerted by a central portion of the wrap as claimed in claim 3. Although the venous band of Shifrin varies in rigidity along its length, the variability is due to a cavity in the interior of the band being fillable with a gas, fluid or solidifying fluid. Shifrin provides no disclosure or suggestion that the side edge portions of the band exert or could exert a lower compressive force than the central portion of the band. Shifrin does not meet all of the limitations of claim 3 and thus can not anticipate claim 3 or claims 15–17 which depend from claim 3.

Claims 1–3, 9–10, 17, 22 and 24–26 have been rejected as anticipated by Gilles et al. US Pub. No. 2006/0052866. As noted above, claims 1–2 have been cancelled. Although Giles describes an elastic membrane that is wrapped around a vessel to treat a stiffened blood vessel, like Shifrin, Giles provides no disclosure or suggestion that the side edge portions of the membrane exert or could exert a lower compressive force than the central portion of the membrane. As depicted in Figure 4, the Giles membrane causes the same problems that the claimed invention solves or avoids. Accordingly, Giles does not meet all of the limitations of claim 3 and thus can not anticipate claim 3 or claims 9–10, 17, 22 and 24–26 which depend from claim 3.

Claims 4–8, 18–21 and 23 have been rejected as unpatentable over Shifrin and claims 4–8 and 18–21 have been rejected as unpatentable over Giles. As noted above, Shifrin and Giles fail to meet each of the limitations of claim 3. Claims 4–8, 18–21 and 23 depend from claim 3. Thus, neither Shifrin nor Giles can be used to establish a *prima facie* case of obviousness over these claims. Accordingly, Claims 4–8, 18–21 and 23 are patentable over Shifrin and Giles.

New claim 27 and 28, which depend from claims 4 and 10 respectively, have been added by this amendment and are patentable over Shifrin and Giles for the reasons set forth above.

Claims 11–14 were indicated to be allowable. Claims 11–14 have been re-written as new claims 29–32 with claims 29 and 31 being written in independent form including all of the limitations of the base and intervening claims to claims 11 and 13.

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Prompt and favorable action on the merits of the claims is earnestly solicited.
Should the Examiner have any questions or comments, the undersigned can be
reached at (949) 567-6700.

The Commissioner is authorized to charge any fee which may be required in
connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

/Kenneth S. Roberts/

Dated: 1/15/09

By: _____

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